

**REMARKS**

The Office Action mailed September 11, 2006, has been received and reviewed. Claims 1 through 19, and 21 through 41 are currently pending in the application. Claims 1 through 19, and 21 through 41 stand rejected. No claims have been amended. Applicants respectfully request reconsideration of the application with respect to the analysis presented herein.

**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in view of U.S. Patent No. 7,007,062 to Serenyi et al.

Claims 1 through 19, 21 through 25, 29 through 31, and 36 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Serenyi et al. (U.S. Patent No. 7,007,062). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Regarding claim 1, in rejecting this claim the Examiner states that:

"Serenyi indicates utilizing opportunistic data transfer (transfer data once the connection has been established – refer to Col 5, Lines 15-25, Loc 7, Lines 1-20, Lines 45-67 and Col 8, Lines 1-12). At the time of the invention, is would have been obvious to a person of ordinary skill in the art to indicate utilizing the opportunistic data transfer.

The suggestion/motivation for doing so would have been Serenyi indicates that by providing the transfer, the receiving side is able to receive specific type or multiple unspecified types of data which will facilitate the transfer data in the fast manner."

Applicants first address a motivation to combine the references. There must be a reasonable expectation of success when combining teachings from multiple references. Applicants assert that at the time the invention was made, a person of ordinary skill in the art would not be motivated to look to the teachings of the Serenyi reference. The present invention, as recited in claim 1, is directed toward opportunistic data transfers in a networked communication system that does not require reliable networking connections. Serenyi, on the other hand, is directed toward “transmitting data using streaming media protocols such as real-time transfer protocols (RTP) and real-time streaming protocols (RTSP) in a computer network environment.” (See abstract). Applicants assert that a person of ordinary skill in the art would not look to a reference involving “real-time” data transfers when building a network that does not require reliable networking connections. A person of ordinary skill in the art would recognize that movement of real-time or near real-time data would likely require reliable network connections. Therefore, when building a network that does not require reliable connections, it is likely that a person of ordinary skill in the art would not look to teachings involving real-time data movement because there would not be a reasonable expectation of success in using such teachings.

Next, Applicants address the element of opportunistic data transfer. The Examiner states that Kaye does not expressly indicate utilizing opportunistic data transfer. Applicants agree. Then, the Examiner asserts that Serenyi “indicates utilizing opportunistic data transfer.” Applicants disagree. The element, as recited in claim 1, includes “employing an **opportunistic data transfer** between the first and second communication nodes across the dynamic connection **while the dynamic connection is activated.**” Furthermore, with respect to the dynamic connection, claim 1 recites, “creating a dynamic connection between the first and second communication nodes **while in communication range.**”

While it may be possible to define certain data transfers in Serenyi as “opportunistic,” Applicants assert that these opportunistic data transfers have nothing to do with whether a dynamic connection, as defined in claim 1, is activated.

Applicants can find no reference in Serenyi to a dynamic connection, let alone the dynamic connection being created while communication nodes are in communication range. To the contrary, it appears to Applicants that a connection must be established for Serenyi to perform what the Examiner is considering an “opportunistic data transfer.”

To Applicants, there is a significant difference between a connection and communications. Communications occur across a connection, but the connection must be established for the communications to occur. The Office Action states, that Serenyi suggests to “transfer data once the connection has been established.” Applicants can understand how Serenyi may be interpreted as suggesting this data transfer if the definition of “connection has been established” is interpreted very loosely as communications, and not in the way that is recited in claim 1 as a connection. As stated previously, the dynamic connection is created while communication nodes are in **communication range**. Applicants can find no reference in Serenyi to nodes being in communication range, let alone establishing a dynamic connection while in that communication range.

It appears to Applicants that the Examiner is interpreting “connection” as a negotiated agreement between nodes that transferring the real-time data can happen reliably. The negotiation is a communication process that occurs between the nodes through an established connection. This is evidenced by the Serenyi reference stating: “The caching proxy server 401 and originating server 301 may establish a communication process in which the caching proxy server 401 and the originating server may engage in a negotiation process 502 for communicating back and forth in order to aid a smooth streaming media data packet transmission.” Furthermore, it appears to Applicants that throughout the disclosure of the Serenyi reference the ability to communicate between the caching proxy server and originating server is assumed through an established connection. Applicants can find no teaching, explicit or implicit, of how this connection is originally established.

With the ability to communicate through an established connection implicit in Serenyi, what is disclosed is the communication process by which the nodes negotiate to determine if there may be a reliable opportunity to transfer the data. In other words, a connection is a necessary prerequisite to performing the communication process. In contrast, in claim 1, the opportunistic data transfers occur if and when the communication nodes are in communication range such that a dynamic connection can be established.

Therefore, the element of “employing an **opportunistic data transfer** between the first and second communication nodes across the dynamic connection **while the dynamic connection is activated**,” is not taught or suggested by the Kaye reference and the Serenyi reference as is required for a 30 U.S.C. § 103 obviousness rejection. It is particularly true that Kaye and Serenyi

do not teach or suggest opportunistic data transfers using a dynamic connection defined in claim 1 as a created “between the first and second communication nodes **while in communication range.**”

As to another portion of claim 1, Applicants respectfully assert that Kaye does not teach or suggest the “**monitor element,**” as recited in claim 1. In responding to Applicants’ remarks in a previous amendment, dated March 28, 2005, the Examiner states in this Office Action that Kaye discloses:

“a method for replicating data using a first monitor (monitoring party/subscriber M, Col 9, lines 42-67) at the first communication node and a second monitor (monitored party/subscriber B, refer to Col 9, lines 42-67, each nodes has monitoring functionalities) at the second communication node to determine when the first and second communication node are within communication range (refer to Col 8, Lines 1-5, 19-31).”

Claim 1 recites, “using a **first monitor** at the first communication node and a **second monitor** at the second communication node **to determine when the first and second communication nodes are within communication range.**” In other words, in claim 1 the monitoring elements in the first and second communication nodes, monitor signals, and signal strengths, to determine when the nodes are within communication range, such that a network connection may be established. This is apparent from the specification stating, “execution begins with decision block 80, which determines whether or not one or more communication nodes are within communication range. In a dynamically mobile data communication system, all communication nodes listen for all other communication nodes. When any two or more communication nodes are within communication range a dynamic LAN is created in step 82. Alternatively, if decision block 80 determines that communication node is not within communication range of any other communication node, the communication node that is out of range waits until it is within communication range with one or more other communication nodes” (page 14, line 21 to page 15, line 6).

However, in the passages from Kaye cited by the Examiner, and in general when discussing “monitoring,” Kaye apparently presumes network connections are established, and the “monitoring” in Kaye is defined as “In some systems there may be a requirement to **monitor the activity of individual subscribers**” (col. 9, lines 42-43). It appears to Applicants that the

monitor in Kaye is for monitoring “**activity**” of a subscriber, which only occurs because the communication channel is already established. In contrast, in claim 1 of the present application, the monitors function to determine if and when a network connection may be established.

In addition, Kaye defines the monitor function in one node and the subscriber to be monitored as another node, with no mention of a monitor in the subscriber to be monitored. Kaye apparently does describe a “second monitor” at a second communication node. However, this second monitor is to monitor the “activity” of the individual subscriber. In other words, the “activity” monitoring in Kaye may be considered a master/slave monitoring, wherein the subscriber to be monitored is not considered to have an “activity monitor.” This is evidenced by Kaye stating “there may be a requirement to monitor the activity of individual subscribers and in order to do this an authorized subscriber (typically, but not necessarily, a dispatcher) makes a request on any node to monitor any individual subscriber (referred to as the monitored party)” (col. 9, lines 42-46). In contrast, claim 1 of the present application recites a peer-to-peer, or mutual monitoring of the ability to communicate by both the first and second communication nodes such that both communication nodes may determine when a network connection may be established.

With respect to the Serenyi reference, Applicants can find no description in Serenyi of a monitoring function at each node, wherein the monitoring function determines when the nodes are within communication range.

Therefore, Applicants assert that the prior art references of Kaye and Serenyi do not teach or suggest all the claim limitations recited in claim 1, as is required for a 30 U.S.C. § 103 rejection. Namely, the claim element of “using a **second monitor** at the second communication node **to determine when the first and second communication nodes are within communication range**,” is not taught or suggested.

For these reasons, Applicants assert that claim 1 is now allowable and Applicants respectfully request that the rejection of claim 1 be withdrawn.

Regarding claims 2-18, these claims depend from now allowable claim 1. Therefore, at least by virtue of their dependency from claim 1, claims 2-18 are now allowable and Applicants respectfully request that the rejection of claims 2-18 be withdrawn.

Regarding claim 19, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 19 element of “an opportunistic data transfer protocol component located at each communication node of the plurality.” Therefore, a 35 U.S.C. § 103 obviousness rejection is improper because the prior art references of Kaye and Serenyi do not teach or suggest all the claim limitations recited in claim 19. As a result, Applicants respectfully request that the rejection of amended claim 19 be withdrawn.

Regarding claims 21-25, these claims depend from now allowable claim 19. Therefore, at least by virtue of their dependency from claim 19, claims 21-25 are now allowable and Applicants respectfully request that the rejection of claims 21-25 be withdrawn.

Regarding claim 29, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 29 element of “determining whether a first communication node and a second communication node are within communication range, wherein if the first and second communication nodes are within communication range, performing an opportunistic data transfer.” Therefore, a 35 U.S.C. § 103 obviousness rejection is improper because the prior art references of Kaye and Serenyi do not teach or suggest all the claim limitations recited in claim 29. As a result, Applicants respectfully request that the rejection of claim 29 be withdrawn.

Regarding claims 30 and 31, these claims depend from now allowable claim 29. Therefore, at least by virtue of their dependency from claim 29, claims 30 and 31 are now allowable and Applicants respectfully request that the rejection of claims 30 and 31 be withdrawn.

Regarding claim 36, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 36 element of “determining whether a first communication node and a second communication node are within communication range, wherein the first communication node is mobile; and wherein if the first and second communication nodes are within communication range, performing an opportunistic data transfer.” Therefore, a 35 U.S.C. § 103 obviousness rejection is improper because the prior art references of Kaye and Serenyi do not teach or suggest all the claim limitations recited in claim

36. As a result, Applicants respectfully request that the rejection of claim 36 be withdrawn.

Regarding claims 37 and 38, these claims depend from now allowable claim 36. Therefore, at least by virtue of their dependency from claim 36, claims 37 and 38 are now allowable and Applicants respectfully request that the rejection of claims 37 and 38 be withdrawn.

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in view of U.S. Patent No. 7,007,062 to Serenyi et al. and further in view of U.S. Patent No. 6,141,686 to Jackowski et al.

Claims 26 through 28, 32 through 35, and 39 through 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Serenyi et al. (U.S. Patent No. 7,007,062) and further in view of Jackowski et al. (U.S. Patent No. 6,141,686). Applicants respectfully traverse this rejection, as hereinafter set forth.

Regarding claims 26-28, these claims depend from now allowable claim 19. Therefore, at least by virtue of their dependency from claim 19, claims 26-28 are now allowable and Applicants respectfully request that the rejection of claims 26-28 be withdrawn.

Regarding claims 32-35, these claims depend from now allowable claim 29. Therefore, at least by virtue of their dependency from claim 29, claims 32-35 are now allowable and Applicants respectfully request that the rejection of claims 32-35 be withdrawn.

Regarding claims 39-41, these claims depend from now allowable claim 36. Therefore, at least by virtue of their dependency from claim 36, claims 39-41 are now allowable and Applicants respectfully request that the rejection of claims 39-41 be withdrawn.

### CONCLUSION

Claims 1-19 and 21-41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

/Stephen R. Christian/

Stephen R. Christian  
Registration No. 32,687  
Attorney for Applicants  
P.O. Box 1625  
Idaho Falls, ID 83415-3899  
Phone: (208) 526-9140  
Fax: (208) 526-8339

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